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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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IB Docket No. 96-261

COMMENTS OF TELECOM NEW ZEALAND LIMITED

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Summary

Consistent with the Commission's policy of tailoring its accounting rate policies to reflect variations in competitive conditions on U.S. international routes, the Commission should not adopt benchmark settlement rates for countries on routes where effective competition exists at both ends. On these routes, the Commission can and should rely on competition to discipline the market for international termination services. At a minimum, the Commission should forbear from applying benchmarks on routes, such as the U.S.-New Zealand route, where the foreign market meets the Commission's effective competitive opportunities (ECO) test.

Should the Commission decide to adopt benchmark settlement rates that would apply to New Zealand, it should adopt country-specific benchmarks based on each country's "tariffed components price" for terminating international traffic. The Commission should put aside its "preferred option" of lumping countries together by level of economic development and establishing a uniform benchmark range for all countries in the category. The cost of terminating U.S.-outbound traffic in New Zealand is radically different from the cost of terminating traffic in Bermuda or Belgium. Yet under the Commission's preferred approach, the settlement benchmark for New Zealand would be set using a formula that gives exactly the same weight to the cost of terminating traffic in Bermuda as to the cost of terminating traffic in New Zealand. This approach is inconsistent with the Commission's stated objective of moving toward settlement rates that reflect the actual cost of terminating international traffic in a given country.

Furthermore, the Commission should avoid adopting rules and policies that could have the unintended effect of hindering the introduction of these alternatives, thus denying U.S. consumers the benefits of heightened competition. International simple resale is a prime example of an alternative service that creates downward pressure on international settlement rates. It would be counterproductive for the Commission to impose settlement rate conditions as a condition for authorizing international simple resale carriers, especially in markets previously found to be equivalent.

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COMMENTS OF TELECOM NEW ZEALAND LIMITED

Telecom New Zealand Limited ("TNZL") hereby files its comments on the Commission's Notice of Proposed Rulemaking on International Settlement Rates.^{1/} The Commission proposes to revise its benchmark settlement rates for international message telephone service (IMTS) between the United States and foreign destinations.

The Commission proposes to base the maximum benchmark rates U.S. carriers should pay foreign carriers to terminate international traffic on the per-minute cost of the three specific network elements used to terminate an inbound international call. These elements are (1) international transmission facilities, (2) international switching facilities; and (3) domestic transport and termination facilities. For each country, the Commission proposes to sum the three components to determine a per-minute "tariffed components price" for terminating international traffic.

^{1/} *International Settlement Rates*, Notice of Proposed Rulemaking, IB Docket No. 96-261, FCC 96-484 (rel. Dec. 19, 1996) ("*Settlements Notice*").

Having determined a tariffed components price for each country, the Commission sought comment on two options for determining settlement rate benchmark ranges. Under the Commission's preferred option, countries would be grouped into three categories, based on their respective levels of economic development; upper-income countries; middle-income countries; and lower-income countries.^{2/} For each category, the upper end of the benchmark settlement rate range would be the simple average of the tariffed components price of all of the countries in the category. Under the second option, the Commission would set country-by-country benchmark ranges, with the upper limit being the specific country's tariffed components price.^{3/} Under either option, the lower end of the benchmark range would be 9¢/minute, which is the Commission's own estimate of the maximum, actual incremental cost of terminating international traffic.^{4/}

The *Settlements Notice* is the second of two proceedings the Commission has undertaken recently to "spur competition in international services"^{5/} and to implement its new approach to international settlements reform, as outlined in the *Accounting Rate Policy Statement*.^{6/} TNZL reiterates its support for the Commission's approach, in particular its

^{2/} *Id.* at ¶ ¶ 43-53.

^{3/} *Id.* at ¶ ¶ 54-55.

^{4/} *Id.* at ¶ 51-52. The Commission also proposed a "transition schedule" for "full compliance" with the revised benchmarks. *Id.* at ¶ ¶ 58-68. Specifically, it proposed to "require that settlement rates for U.S. carriers with high-income countries (such as New Zealand, assuming it would be subject to the benchmarks) be at or below our benchmarks within one year." *Id.* at ¶ 63. For middle-income countries, the transition period would be two years, and for lower income countries, it would be four years.

^{5/} *Regulation of International Accounting Rates*, CC Docket No. 90-337, Phase II, Fourth Report and Order, FCC 96-459 (rel. Dec. 3, 1996) ("*Flexibility Order*").

^{6/} *Policy Statement on International Accounting Rate Reform*, 11 FCC Rcd 3146 (1996) ("*Accounting Rate Policy Statement*").

intention to tailor its settlement rate policies to reflect diverse market structures and to encourage alternative methods for the delivery of international traffic outside the traditional correspondent/accounting rates system.^{7/}

The first action taken by the Commission was the adoption of the *Flexibility Order*, which established a framework for allowing alternative payment arrangements (subject to certain safeguards) between U.S. carriers and foreign carriers in countries that satisfy the Commission's effective competitive opportunities (ECO) test.^{8/} TNZL agrees with the Commission that the policies adopted in the *Flexibility Order* will accelerate the advent of full competition on U.S. international routes where effective competition exists in both the originating and terminating markets, such as on the U.S.-New Zealand route.

Indeed, TNZL would support further liberalization. While the *Flexibility Order* contemplates granting facilities-based carriers waivers to provide international services outside the correspondent system between the U.S. and countries that meet the ECO test, in practice the review process for such waiver requests is likely to be lengthy, potentially extending over many months. Based upon their current practice of opposing every request to liberalize regulation of specific markets, and given their vested interest in preserving the ISP, the large incumbent interexchange carriers (IXCs) are certain to oppose ISP waiver requests as a matter of course. But if carriers are forced to wait for months or years of regulatory processing before they can implement these alternative service arrangements, the competitive

^{7/} See Supplemental Reply Comments of Telecom New Zealand International Limited, CC Docket 90-337, Phase II, filed March 14, 1996.

^{8/} *Flexibility Order*, *supra* n.5.

benefits of these arrangements will be delayed, to the detriment of U.S. consumers. Indeed, long processing delays are likely to suppress substantially the number of waiver requests.

Only a modest adjustment to the ISP waiver framework established in the *Flexibility Order* is required to address this problem. When a carrier applies for an ISP waiver to engage in certain alternative service and payment arrangements on a U.S. international route where the destination market meets the ECO test, the carrier should automatically be granted an interim waiver allowing it to proceed with the proposed arrangement pending further Commission action. Such interim waivers should be granted to carriers seeking ISP waivers in order to (1) operate full circuits between the U.S. and countries that meet the ECO test, and (2) enter into sender-keeps-all arrangements for the transmission of international traffic on such routes.^{9/} If the Commission granted interim ISP waivers, the major IXC's no longer would be able to delay the salutary effects of competition by systematically opposing all requests to liberalize the international services market.

I. Where Effective Competition Exists, the Commission Can And Should Rely on Competition to Ensure Reasonable Rates for Terminating International Traffic

The benchmarks and enforcement actions proposed in the *Settlements Notice* appear clearly to be aimed at countries that "are likely to continue to have monopoly carriers or limited competition."^{10/} In such markets, the Commission tentatively concludes that it

^{9/} Other types of alternative payment and service arrangements would only be permitted pursuant to formal grant of an ISP waiver request. But because the provision of full circuits and sender-keeps all arrangements raise few if any potential competitive concerns on routes where effective competition exists at both ends, there is no reason to delay carriers from entering into such arrangements. Indeed, delay would harm the public interest by retarding the consumer welfare benefits these arrangements would produce.

^{10/} *Settlements Notice* at ¶ 23.

"cannot rely solely on market forces to achieve timely reform of accounting rates."^{11/} But on U.S. international routes where effective competition exists at both ends, such as the U.S.-New Zealand route, the Commission can and should rely on the policies adopted in the *Flexibility Order* to achieve its core objective in this proceeding: to drive international termination charges toward costs. TNZL concurs fully with the Commission that "the most effective way to ensure settlement rate reform that results in reasonable international calling prices is through the development of competitive markets for IMTS."^{12/}

Where competition and alternative means for terminating international traffic exist outside the settlements system, U.S. carriers can simply avoid dealing with a foreign correspondent that insists on an inflated accounting rate. On such routes, the operation of the market alone is sufficient to ensure that settlement rates more closely track the underlying costs of terminating international calls. No purpose would be served by the adoption of settlement rate benchmarks for countries, such as New Zealand, where effective competition exists in the international services market.

Should the Commission decide nonetheless to adopt a system of settlement rate benchmarks that would otherwise apply to New Zealand, TNZL strongly supports the Commission's proposal to forbear from applying the benchmarks on routes where there is effective competition for international services.^{13/} In the interests of clarity and regulatory certainty, the Commission should determine affirmatively in its order in this proceeding that

^{11/} *Id.*

^{12/} *Id.* at ¶ 20.

^{13/} *Id.* at ¶ 69.

it will forbear from applying the benchmarks to countries that satisfy the ECO test, or in the alternative that it will forbear from applying the benchmarks to New Zealand.^{14/}

II. Settlement Benchmarks Should Be Country-Specific

Should the Commission decide to adopt settlement rate benchmarks applicable to countries where effective competition exists, such as New Zealand, the benchmark should be related to the actual cost of terminating international traffic in those countries, as reflected in each country's tariffed components prices.

Under the Commission's preferred benchmarking approach, countries would be grouped together by level of economic development, and a maximum benchmark settlement rate would be established for all of the countries in the group by averaging together their tariffed components prices. This approach would undermine, not further, the Commission's stated objective of moving settlement rates toward actual costs. The cost of terminating a call from the U.S. to New Zealand differs significantly from the cost of terminating a call to Belgium or Bermuda, for example. Yet the Commission proposes to use "the simple average of the tariffed components prices in each economic development category,"^{15/} thus giving the tariffed components price for Belgium and Bermuda exactly the same weight in

^{14/} *Id.* at ¶ 69. The existence of effective competition on the route alone should be sufficient to trigger forbearance. The Commission proposes, however, also to require evidence of "substantial progress . . . toward achieving (settlement) rates that represent the incremental cost of terminating international service" as a condition for forbearing from applying the benchmarks. *Id.* Should the Commission adopt this additional condition for forbearance, TNZL requests that the Commission find expressly that the very significant reductions in the settlement rate on the U.S.-New Zealand route since 1990 constitute "substantial progress," warranting forbearance. The settlement rate on the route has fallen from 0.90 Special Drawing Rights (SDRs) (\$1.28) in 1990 to 0.20 SDRs (\$0.30) in 1996.

^{15/} *Settlements Notice* at ¶ 47.

determining the benchmark settlement rate for New Zealand as New Zealand's own tariffed components price. This approach is inconsistent with the Commission's stated objective of moving toward settlement rates that reflect the actual cost of terminating international traffic in a given country.

New Zealand is almost twice as far from the nearest point in the United States (6511 miles) than is Belgium (3477 miles), and it is almost eight times further away than Bermuda (830 miles). As a result, the "international transmission" component for New Zealand is significantly higher than for either Belgium or Bermuda. In addition, the New Zealand population is less urbanized than in most high-income countries, and is dispersed over a highly disparate topography on several islands that is costly to serve with telecommunications facilities. The population density of New Zealand is 33 persons per square mile. In comparison, the population densities of Bermuda and Belgium are, respectively, 3050 persons/square mile and 835 persons/square mile. For these reasons, the "national extension" component for New Zealand is one of the highest among the high-income countries. This is a simple reflection of the higher cost of distributing all traffic, including international traffic, in a country with New Zealand's geographic location, population distribution, and topography.

As these facts make clear, there is no necessary correlation between the cost of terminating international traffic in a particular country and that country's level of economic development. Accordingly, the Commission should reject the option of merely grouping countries by level of economic development and setting a single maximum benchmark settlement rate for all high-income countries.

If the Commission decides to revise its benchmarks on the basis of the tariffed components prices concept, it would be far more coherent and sustainable for the Commission to adopt the other option contemplated in the Notice, that is, country-specific benchmarks. While the use of tariffed components prices is, as the Commission recognizes, at best a proxy for the actual cost of terminating international traffic, a country's own tariffed components price clearly is a much closer proxy than an average that combines countries with radically disparate characteristics affecting these costs. Thus, to the extent the Commission determines to set new maximum benchmark settlement rates based on its survey of tariffed components prices, TNZL respectfully urges the Commission to adopt country-specific benchmarks.

III. The Commission Should Not Impose Settlement Rate Conditions on Authorizations to Provide Switched Services over Resold International Private Lines

The Commission also proposes to require that the settlement rate on a route be within the applicable benchmark as a condition for allowing the use of international private lines to carry switched traffic between the U.S. and foreign destination points -- *i.e.*, international simple resale (ISR).^{16/} The Commission's rules currently require a demonstration that "equivalent opportunities" exist for U.S. carriers to interconnect international private lines to the public switched network at the foreign end.^{17/} The Commission requests comment on

^{16/} *Id.* at ¶ 81.

^{17/} Regulation of International Accounting Rates, CC Docket No. 90-337, Phase II, First Report and Order, 7 FCC Rcd 559 (1991).

whether the proposed settlement rate condition should replace the equivalency requirement or be used in conjunction with the equivalency requirement.

TNZL is concerned requiring settlement rates on a route to be within the applicable benchmarks as a condition for granting authority to provide switched services over international private lines could undermine, not further, the Commission's own stated objectives in this proceeding. In the first place, one reason the Commission allows carriers to deliver switched traffic over resold international private lines is precisely because such arrangements exert downward pressure on accounting and settlement rates. Because switched traffic carried over international private lines is not settled, it will tend to migrate to such lines if settlement rates are above the costs the international private line carrier incurs to terminate the traffic at the foreign end. Given the Commission's explicit objective in authorizing ISR -- to drive settlement rates toward costs -- it would be counterproductive to prevent this form of international service in cases where it is both more necessary and more likely to be effective.

The logical effect of the provision of switched services over resold international private lines is to put downward pressure on settlement rates. The Commission should not require that the effect exist before the cause.

The Commission's proposal also would give U.S. carriers' foreign correspondents effective control over whether they will face competition in switched services from international private line resellers. As the Commission notes, it would be "meaningless" to require a carrier seeking authority to provide switched services over resold international private lines to comply with the Commission's settlement benchmarks, since a "pure reseller"

does not settle any traffic with U.S. carriers.^{18/} The Commission proposes, therefore, to require that the settlement rate "on the route" be within the benchmarks.^{19/} However, that rate is negotiated with the facilities-based international carrier or carriers in the foreign country.

Thus, under the Commission's proposal, a foreign carrier could block the entry of a competitor providing switched services over resold international private lines simply by refusing to reduce the settlement rate on the route, and thus avoid the pressure for lower settlement rates that such competition would produce. Obviously, foreign facilities-based carriers would have every incentive to engage in such behavior, and no incentive whatsoever to facilitate the entry of competitors by agreeing to lower accounting rates. In sum, the Commission's proposal to impose settlement rate conditions on international simple resale authorizations is likely to increase, rather than ease, foreign carriers' resistance to lowering settlement rates.

The Commission's proposal to impose settlements conditions on ISR authorizations could have an additional unintended consequence in countries with privately owned foreign carriers. Specifically, the proposed policy could enable privately owned carriers to thwart the introduction of ISR competition even in countries where the government and regulators favor this form of competition. Even if a foreign regulator established the necessary conditions for the provision of ISR service on the U.S. route -- by establishing equivalent opportunities to interconnect international private lines to the public switched network -- a

^{18/} *Settlements Notice*. at ¶ 82.

^{19/} *Id.*

privately owned carrier in that country could, under the Commission's proposal, block ISR competition simply by refusing to agree to a settlement rate that falls within the benchmark.

Should the Commission decide to adopt its proposal despite these concerns, TNZL urges the Commission not to impose the proposed settlement rates condition on routes where it has previously found that equivalent opportunities exist. On such routes, international simple resale operators currently are providing service or have applications for authority to do so pending. It would be arbitrary and capricious for the Commission to apply the condition retroactively to international simple resale carriers currently operating on a route, and equally inequitable for the Commission to impose the condition on some carriers and not others.

IV. Conclusion

TNZL respectfully urges it to adopt rules consistent with the positions taken in these comments.

Respectfully Submitted,



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February 7, 1997

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Comments in IB Docket No. 96-261 was delivered by hand on this 7th day of February, 1997, to the below-listed parties:

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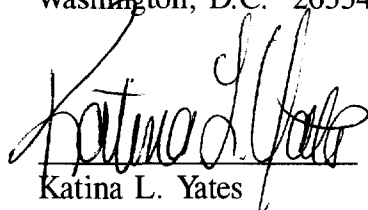
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